

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of G. J. LAPRATT, Minor.

UNPUBLISHED

March 20, 2014

No. 317028

Oakland Circuit Court

Family Division

LC No. 11-784235-NA

Before: M. J. KELLY, P.J., and CAVANAGH and FORT HOOD, JJ.

PER CURIAM.

Respondent father appeals by right the order terminating his parental rights to his minor child, pursuant to MCL 712A.19b(3)(b)(i), (c)(i), (g), and (j). We affirm.¹

The court exercised temporary jurisdiction over the child following a no-contest plea to allegations of abuse of the child by respondent. A parent-agency agreement was executed, requiring respondent to complete parenting classes, complete individual therapy, complete a substance abuse assessment, submit to weekly drug screens, maintain housing, maintain employment, and meet the child's needs. Although respondent participated in some services, his conduct during the near two-year pendency of the case caused concern. Respondent did not comply with the drug screening requirement, and the missed screens were deemed positive. He married while this case continued, and there were reports of alcohol abuse and domestic violence between the married couple. Respondent's conduct caused him to violate his probation in the child abuse case, and he ultimately was incarcerated. Although respondent did not regularly attend visitation, on one occasion, respondent tried to get the child to runaway following a visitation. Respondent was unable to cooperate with family members and caseworkers handling the child's case, and even threatened a caseworker. The lower court found that the statutory grounds were established because respondent did not benefit from services and there was no

¹ In his initial brief on appeal, respondent also raised a question regarding his appellate counsel's inability to obtain a transcript of a portion of the proceedings below. However, appellate counsel confirmed receipt of this transcript, and this Court allowed respondent to file a supplemental brief regarding the outcome of that proceeding. Accordingly, this issue is moot, and it need not be decided. *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998).

expectation that he would benefit within a reasonable time. Following a separate hearing, the lower court also found that termination was in the best interests of the child.

On appeal, respondent argues that (1) the trial court erred when it found that statutory grounds for termination of his parental rights were proven by clear and convincing evidence; and (2) the trial court clearly erred when it determined that termination of his parental rights was in the child's best interests. We disagree.

"To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been proved by clear and convincing evidence." *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). The trial court's findings are reviewed for clear error. *Id.* at 33; see also MCR 3.977(K). To be clearly erroneous, a trial court's determination must be more than possibly or probably incorrect. *Ellis*, 294 Mich App at 33. "A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made." *Id.* In reviewing the trial court's determination, this Court must give due regard to the unique opportunity of the trial court to judge the credibility of those witnesses who appeared before it. *Id.*; see also MCR 2.613(C); MCR 3.902(A).

Although the trial court terminated respondent's parental rights pursuant to four statutory grounds, MCL 712A.19b(3)(b)(i), (c)(i), (g), and (j), respondent only challenges three of these grounds; he omits MCL 712A.19b(3)(b)(i) entirely. Respondent also fails to provide any substantive discussion of MCL 712A.19b(3)(b)(i) or MCL 712A.19(3)(c)(i) in his brief on appeal. Respondent's argument regarding MCL 712A.19b(3)(j), is minimal, and there is no citation to the record. Nonetheless we will address the merits of the claim of appeal.

"Only one statutory ground need be established by clear and convincing evidence to terminate a respondent's parental rights, even if the court erroneously found sufficient evidence under other statutory grounds." *Ellis*, 294 Mich App at 32. Termination of parental rights is appropriate when the parent caused physical injury to the child and there is a reasonable likelihood that the child will suffer injury in the near future if placed in the parent's home. MCL 712A.19b(3)(b)(i).

The original petition alleged that respondent physically assaulted the child. As a result of the incident giving rise to the petition, respondent pleaded guilty to third-degree child abuse. Accordingly, there was clear and convincing evidence that the child was physically abused, and that respondent's act caused the physical abuse. During the nearly two-year period while the child remained under the jurisdiction of the trial court, respondent displayed an inability to control his anger, and threatened those trying to help him if they would not acquiesce to his demands. In the months prior to the trial court's finding, respondent was involved in numerous incidents of domestic violence, with alcohol use being a common thread throughout these incidents. Respondent also admitted to drinking heavily and daily while trying to regain custody of the child. Given these circumstances, the trial court did not clearly err when it determined that there was a reasonable likelihood that the child would suffer further physical abuse if returned to respondent's home. Although we need not address the remaining grounds for termination, we note that the factual scenario delineated above supported termination premised on MCL 712A.19b(3)(c)(i), (g), and (j). Respondent failed to comply with the parent-agency agreement,

and this failure is evidence that termination is appropriate under these subsections. See *In re Trejo*, 462 Mich 341, 360-363; 612 NW2d 407 (2000). Respondent failed to participate in court-ordered services, failed to benefit from services, continued to consume alcohol, and engaged in assaultive behavior against his spouse and one of her children. In light of the court's factual findings, termination was appropriate. Respondent's argument, that he partially complied, is insufficient in light of the entire factual record.

Respondent next argues that the trial court clearly erred when it determined that termination of his parental rights was in the best interests of the child. We disagree.

"If a statutory ground for termination is established and the trial court finds 'that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.'" *Ellis*, 294 Mich App at 32-33 (quoting MCL 712A.19b(5)). Review of the trial court's determination that termination is in the best interests of a child is reviewed for clear error. MCR 3.977(K); *Ellis*, 294 Mich App at 33. When making a determination of whether termination of parental rights is in the best interests of a child, the trial court must consider "the evidence on the whole record" *In re LE*, 278 Mich App 1, 25; 747 NW2d 883 (2008). "In deciding whether termination is in the child's best interests, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). "[T]he preponderance of the evidence standard [of proof] applies to the best-interest determination." *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013).

Here, respondent admitted that he had a serious alcohol problem, and drank heavily and daily while the child was under the jurisdiction of the trial court, likely explaining why respondent did not appear for random drug screenings. Despite being provided with therapy, parenting classes, and other services, respondent made little or no progress. Those involved with the case testified that respondent did not benefit from parenting classes or therapy, and his conduct after these services were provided supported this testimony. In the months leading to the termination of his parental rights, respondent was involved in a number of domestic disturbances, all of which involved alcohol. Respondent was incarcerated as the result of his actions. As the trial court indicated, respondent's life was consumed in chaos. The record indicates that respondent's ability to provide for the child had deteriorated since the original petition was filed, despite petitioner's best efforts.

In contrast, the child was progressing in his foster home that provided him with a structured, stable environment to address his medical and psychological issues, causing marked improvements in his own behavior issues. The child wished to remain with his foster parents, and viewed his foster parents as his family. The child did not want to return to respondent's care, due to a fear that respondent would hit him. At the time of the best interests hearing, the child had been in care for over two years, and had been in a number of different placements. As the trial court concluded, the child needed stability and permanency, and despite petitioner's best efforts, it had become clear that respondent could not provide stability or permanency. Under these circumstances, and especially considering the child's special needs, the trial court did not clearly err when it determined that termination of respondent's parental rights was in the child's

best interests. See *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012) (Where the minor child was in care for 22 months, and the respondents made some progress in addressing their issues, termination of the respondent's parental rights was in the best interests of the minor child because "the child required a permanent, safe, and stable home, which neither respondent was capable of providing."). Respondent's argument of a bond with the child did not outweigh the other factors. *Olive/Metts*, 297 Mich App at 41-42.

Affirmed.

/s/ Michael J. Kelly
/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood